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**UNITED STATES DISTRICT COURT FOR THE
EASTERN DISTRICT OF CALIFORNIA**

Shawn Schwartzberger, Individually and on
behalf of other similarly situated,

Plaintiff,

v.

ConsumerXpress LLC, d/b/a CAC Services,

Defendant.

Case No.: 1:21-CV-00781-NONE-BAM

**AMENDED STIPULATION RELATING
TO THE PENDING NOTICE OF
WITHDRAWAL AND DEFENDANT'S
MOTION TO COMPEL ARBITRATION**

Complaint Filed: May 13, 2021
First Amended Complaint: July 28, 2021

Plaintiff Shawn Schwartzberger and Defendant ConsumerXpress LLC, d/b/a CAC Services
(collectively "the Parties") do hereby submit the following amended stipulation:

1. Plaintiff's and Defendant's counsel have met and conferred pursuant to the Court's
requirements. (ECF 33.)

2. Plaintiff filed a motion for Conditional Certification with respect to his FLSA
collective claims on October 15, 2021 (ECF 19.).

3. On December 2, 2021, Defendant filed its moving papers for a Motion to Compel
Arbitration. (ECF 25.)

4. A hearing was held on Plaintiff's Motion for Conditional Certification on December
3, 2021.

5. Following this, Plaintiff filed a Notice of Non-Opposition to Defendant's Motion to
Compel Arbitration on December 7, 2021. (ECF 28.)

1 6. Furthermore, Plaintiff filed a Notice of Withdrawal of his Motion for Conditional
2 Certification on December 7, 2021. (ECF 27.)

3 7. Defendant lodged an objection to Plaintiff's Notice of Withdrawal of his Motion for
4 Conditional Certification on December 8, 2021. (ECF 30.)

5 8. Plaintiff filed a response to Defendant's Objection. (ECF 31.)

6 9. After meeting and conferring, the Parties have entered this stipulation to resolve (1)
7 Plaintiff's Notice of Withdrawal of his Motion for Conditional Certification and Defendant's
8 objection to such withdrawal; and (2) Plaintiff's Non-Opposition to Defendant's Motion to Compel
9 Arbitration.

10 10. Plaintiff agrees that by this stipulation he dismisses, with prejudice, all collective
11 claims aspects of his Fair Labor Standards Act claim in his First Amended Complaint filed on July
12 28, 2021 (ECF 14.) This dismissal does not extend to Plaintiff's individual wage claims under
13 California labor law and the FLSA. This paragraph is meant to resolve the Court's concerns
14 articulated in its February 22, 2022 Minute Order. (ECF 40.)

15 11. The Parties agree to submit their dispute to arbitration before an arbitrator in Santa
16 Barbara County, California per the terms of the Parties' agreement (see ECF 25-2 at p. 10), which
17 states as follows:

18 Any dispute, claim or controversy arising out of or relating to this Agreement or the
19 breach, termination, enforcement, interpretation or validity thereof, including the
20 determination of the scope or applicability of this agreement to arbitrate, will be
21 determined by arbitration at Santa Barbara, California before arbitrators. The
22 arbitration will be administered by JAMS under its Comprehensive Arbitration Rules
23 and Procedures and under the Expedited Procedures in those Rules, or, on agreement
24 of the Parties, under JAMS' Streamlined Arbitration Rules and Procedures. Judgment
25 on the Award may be entered in any court having jurisdiction. This clause will not
26 preclude parties from seeking provisional remedies in aid of arbitration from a court
27 of appropriate jurisdiction. In no event will the damages awarded include punitive or
28 exemplary damages.

12. The parties may mutually agree to vary the terms specified above as to conditions under which the arbitration will proceed.

13. This stipulation shall not affect any of the Parties' rights under the "Business to Business Agreement" which was attached to Defendant's Motion to Compel Arbitration. (ECF 25-2, page 10 *et seq.*)


14. The Parties stipulate that the Court should enter an order appropriately staying the matter during the pendency of arbitration. Therefore, the Court need not issue a ruling on Plaintiff's Motion for Conditional Certification (ECF 19.). This stipulation is in accordance with the Court's Minute Order dated December 13, 2021, suggesting that the Parties consider a stipulation resolving both the Notice of Withdrawal and the Motion to Compel Arbitration simultaneously. (ECF 32.) The Parties intend that this stipulation resolve these issues in the manner suggested by the Court.

15. The Parties agree that the effect of this stipulation is that Plaintiff may not bring an FLSA collective action dismissed above in a subsequent arbitration. Likewise, Plaintiff agrees that in any subsequent arbitration, Plaintiff will proceed only as an individual and not seek to bring collective or class claims in the arbitration.

16. By way of this agreement, Defendant does not concede nor is Plaintiff deemed to have established that any collective or class claims are able to be arbitrated as collective or class claims.

Dated: February 24, 2022

SAGASER, WATKINS & WIELAND, PC


Paul J. Bauer
Samuel O. Munson
Attorneys for Defendant ConsumerXpress LLC,
dba CAC Services

Dated: February 24, 2022

SHELLIST LAZARZ SLOBIN, LLP


Melinda Arbuckle
Ricardo J. Prieto, *Pro Hac Vice*
Attorneys for Plaintiff Shawn Schwartzenberger

PROOF OF SERVICE

(FRCP(5))

STATE OF CALIFORNIA, COUNTY OF FRESNO

I am employed in the County of Fresno, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 5260 North Palm Avenue, Suite 400, Fresno, California 93704.

On February 25, 2022, I served the following document(s) described as **AMENDED STIPULATION RELATING TO THE PENDING NOTICE OF WITHDRAWAL AND DEFENDANT'S MOTION TO COMPEL ARBITRATION** on the interested parties in this action addressed as follows:

Melinda Arbuckle, Esq.
SHELLIST LAZARZ SLOBIN, LLP
402 W. Broadway, Suite 400
San Diego, CA 92101-3554

Richardo J. Prieto, Esq.
SHELLIST LAZARZ SLOBIN, LLP
11 Greenway Plaza, Suite 1515
Houston, TX 77046

- ☒ **BY CM/ECF NOTICE OF ELECTRONIC FILING:** on the following party(ies) who are registered CM/ECF users, I caused to be electronically filed the above-described document(s) with the Clerk of the court by using the CM/ECF system. The party(ies) in this case who are not registered CM/ECF users will be served by mail or by other means permitted by the court rules.
- ☐ **BY MAIL:** I placed the envelope for collection and mailing following the firm's ordinary business practices. I am readily familiar with the firm's practice for collection and processing correspondence for mailing. On the same day that correspondence placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

Executed on February 25, 2022, at Fresno, California.



Valerie Robinson